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In the Supreme Court of the United States
OCTOBER TERM, 1995

GEORGE W. BUSH, Governor of Texas, *et al.*,
Appellant-Applicants,

vs.

AL VERA, *et al.*, *Appellee-Respondents*

REV. WILLIAM LAWSON, *et al.*,
and
ROBERT REYES, *et al.*, *Appellants*,

vs.

AL VERA, *et al.*, *Appellees*.

UNITED STATES OF AMERICA, *Appellants*,

vs.

AL VERA, *et al.*, *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

STATE APPELLANTS' REPLY BRIEF ON THE MERITS

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I.
THE APPELLEES HAVE ARGUED EVIDENCE THAT IS OUTSIDE THE RECORD

At pp. 2-5 the Appellees cite extensively from a document that was not in evidence before the trial court. That document, a commentary in support of Texas' original state House of Representatives and Senate districting plans, was not offered into evidence. Of course, neither this Court nor the trial court had the benefit of any testimony about the document. It, therefore, is highly improper for the Appellees to file it with this Court and quote extensively from it.[1] This Court has consistently condemned attempts to persuade the Court to decide a case based upon evidence that was not before the court below and not of record in the case

In addition to this improper use of non-record evidence, the Appellees repeatedly quote from newspaper articles that were not in evidence, *see,* Appellees' Brief at 5-7, and in some cases quote from newspaper articles published long after this case was tried. *Id.* at 5, 7. Finally, the Appellees cite cases from other states as if the facts found in those cases were facts found in this case. *Id.* at 30-31.

While the State of Texas believes that all points of view should be heard on the issues involved in this appeal, especially since they implicate policy questions the resolution of which will affect not only Texas but all states in the country, the State of Texas nonetheless must object to the citation and use of nonrecord evidence. Such tactics do no justice to the appropriate resolution of these important and

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[1] Moreover, however optimistic the commentary is about the status of minority voters in Texas, the very plans that the commentary was intended to support were found to violate both state and federal equal protection rights of minority voters. *Terrazas v. Slagle,* 789 F.Supp. 828 (W.D. Tex. 1991). Both the state and federal courts enjoined the implementation of the original state House of Representatives and Senate plans. As a result, the legislature passed new plans that did more to protect the voting rights of Texas minority voters.

critical issues. Therefore, the State of Texas asks this Court to ignore and/or to strike those portions of the Appellees' brief that contain citations to, and arguments based on, nonrecord evidence. See, e.g., Rules of the Supreme Court of the United States, R. 24 (6); *Wygant v. Jackson Board of Education*, 476 U.S. 267, 278 n. 5 (1986).

II.
THE APPELLEES HAVE CHANGED THEIR THEORY OF THE CASE ON APPEAL

For the first time in this case the Appellees have argued that the Voting Rights Act did not require the creation of CDs 18, 29, and 30 as majority-minority districts. This was not their position in the trial court. Indeed, the Appellees' expert, Ronald Weber, proffered a plan containing the same districts as those at issue here, in the same geographical areas of the state, albeit with different looking shapes, explaining:

> 47. . . . I have created an alternative Congressional districting plan for the State of Texas to show that a more narrowly tailored plan can be constructed that pays more attention to traditional districting principles while still enabling African-American and Hispanic voters to elect candidates of choice from an equal number of Congressional districts as in the current plan.
>
> 48. Weber Plan 2 which will be offered as one of plaintiffs' exhibits at trial includes two African-American districts -- one in Dallas County and one in Harris County; six Hispanic districts -- . . . one district in Harris

> County subject to substantial African-American and Hispanic influence.

Joint App. at 186.

Similarly, the Owens-Pate Plan, Pl. Ex. 33, which the Appellees proffered to the court below as an alternative acceptable plan, contained the same districts as those at issue here, in the same geographical locations in the state, albeit with different looking shapes. The Owens-Pate Plan explicitly approves of the creation of a Black district in the Dallas-Fort Worth (Metroplex) area in order "to give Dallas' Black population representation." Pl. Ex. 33 at 4. It also creates an Hispanic district in "near north and southeastern Harris County", *id.* at 5, explaining that "creation of a Hispanic district reflects the fact that Harris County's Hispanic population is greater than its Black population, and Blacks already have a district in Harris County." *Id.*

Unlike Georgia, Louisiana, and North Carolina, Texas was not forced by the Department of Justice to create additional majority-minority districts.[2] Rather, Texas made its own determination of how many majority-minority districts it would create and in what parts of the state it would create them.[3] It arrived at its decision after holding numerous public hearings and after extensive debate in the legislature.[4]

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[2] Indeed, during the legislative process, alternative plans that would have created additional districts with a majority that was African-American were proposed at different times, but each was rejected by the legislature. *See,* Testimony of Paul Colbert, St. Ex. 15, Joint App. at 253. Each of these rejected plans would have strung together dispersed populations from different metropolitan areas that had little in common but the color of their skin.

[3] The Department of Justice pre-cleared HB 1, the congressional redistricting plain at issue in this appeal, without objection. Jt. App. at 343.

[4] For the Appellees to argue that Texas created these districts because of pressure from the Department of Justice, *see* Brief for

Testimony at these public hearings overwhelmingly supported the creation of new majority-minority districts in Dallas and Houston and no witnesses argued that majority-minority districts should not be created or were not necessary to permit the minority communities in those areas the opportunity to elect their candidates of choice. In the legislature the battles over the particularities of where lines would be drawn were often brutal, but no dissenting voices from either party were raised concerning the goal of making these new districts majority-minority.

At trial the Appellees did not disagree with this goal,[5] and the alternative plans advocated by the Appellees all included the same number of majority-minority districts in the same parts of the state.[6] Only now, before this Court, have the Appellees argued that Texas' goal of creating additional new majority-minority districts in Houston and Dallas was impermissible. *See*, Brief for Appellees at 24.

The Appellees now appear to argue that the Constitution prohibits creating majority-minority districts unless those districts are "accidentally" created by some color-blind process. Why is this so? If history is any guide, creation of only influence districts will mean no minority members elected to Congress from Texas.

Although Texas has far more minority officeholders than ever before, the fact still remains that since Reconstruction, of the twenty-five state offices filled by statewide election, only one has been won by an African American, a judge of the Texas Court of Criminal Appeals,

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Appellees at 47, is factually incorrect and nothing short of a flight of fancy.

[5] *See*, testimony of Rep. Kent Grusendorf quoted in the State Appellants' Brief on the Merits at 32-33.

[6] *See*, Weber Plan 2, Jt. App. at 161 and 186, and the Owens-Pate Plan, Plaintiffs' Ex. 33, profferred by Appellees as acceptable alternative plans each containing the majority-minority districts at issue here, albeit with different looking shapes.

and only two have been won by Hispanics, the attorney general and a justice of the Texas Supreme Court. Moreover, with extremely rare exceptions, minority state legislators have been elected only from majority-minority districts, and with no exceptions, *every* minority congressional representative has been elected from a majority-minority district. Thus, although it is clear that the creation of majority-minority election districts in Texas has begun to open the process to minority voters and candidates, it is far from clear that Texas would continue to elect members of ethnic and racial minorities if these majority-minority districts were to be abolished.

In light of this history, and in light of prior court findings, community hearings, and experience that all showed cohesive minority voting and polarization in Dallas and Houston, the legislature reasonably concluded that minority voters still faced the probability of vote dilution in both metropolitan areas.

In Texas, Democrats and Republicans alike agreed that CD 18 needed to be maintained as an African-American opportunity district, and that CDs 29 and 30 needed to be created as Hispanic and African-American opportunity districts, respectively. At trial, all of the Plaintiffs and their lay and expert witnesses agreed with these goals.

In light of this unanimity, it should not be surprising that Texas achieved its goals. The result here was achieved after a delicate balancing of § 2 requirements, community wishes, partisan politics, incumbent protection, and one-person, one-vote requirements. None of these interests was "minimally served." Rather, they were all harmonized and accommodated to each other.

III.
THE LEGISLATURE HAD A STRONG BASIS IN EVIDENCE TO BELIEVE THAT MAJORITY-MINORITY DISTRICTS WERE NECESSARY UNDER THE VOTING RIGHTS ACT

The Appellees assert that the legislature had no information before it at the time it drew the present congressional districts that indicated to it an obligation to draw new majority-minority districts in Dallas and Houston. This bald assertion is flatly contradicted by the record evidence at trial.

Before beginning the actual drawing of congressional district lines in 1991, the Texas Legislature had been thoroughly briefed by the Texas Legislative Council about its legal obligations. A series of briefing materials known as the "gray books" had been published and given to the members of the legislature well in advance of the enactment of the plan. See Pl. Ex. 13, especially Pl. Ex. 13C. These gray books represented an exhaustive examination of the redistricting process and of both state and federal constitutional and legal requirements that applied to redistricting in 1991.

In addition, the legislature held numerous public hearings that continued into the 1991 legislative session.[7] The House and Senate redistricting committees held joint public hearings from February through September, 1990 at locations throughout the state.[8] Among the information that the

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[7] The testimony offered at these public hearings literally fills several boxes. It is contained within Texas' submission to the Department of Justice in order to obtain preclearance under section 5 of the Voting Rights Act. At trial this section 5 submission material was admitted into evidence as Pl. Ex. 3. The minutes of these hearings, which include summaries of this testimony, U.S. Ex. 1086, was also admitted into evidence at trial. Even this summary exhibit is lengthy.

[8] These committee hearings were held in Lubbock, Amarillo, Corpus Christi, El Paso, Midland/Odessa, Houston, Beaumont, Tyler,

committees specifically sought at these hearings was information about the "history of minority participation in the political process, including minority voter registration, minority voter turnout, and minority candidacy for office," the "extent of bloc voting, coalitional voting, and crossover voting by racial or language groups; political cohesiveness of identifiable racial or language groups," and information about the "history of discrimination in the area, particularly discrimination on account of race or language." U.S. Ex. 1086, Minutes of Senate Select Committee on Legislative Redistricting January 26, 1990.

At the hearing held in Houston on June 1, 1990, the minutes indicate that the committees received oral and written testimony from more than twenty witnesses. U.S. Ex. 1086. Several of these witnesses testified that the Hispanic community was cohesive,[9] that reluctance by Anglos to be represented by minority candidates and bloc voting were still present,[10] and that Hispanic voters in Houston were submerged when they were paired with African-American voters in a district.[11] Not one witness suggested that majority-minority districts were unnecessary in Houston or that racially polarized voting was absent.

At the hearing held in Dallas on July 14, 1990, the committees received oral and written testimony from more than fifty witnesses. Nearly all of these witnesses supported the creation of a new majority-minority congressional seat in

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Fort Worth, Dallas, Laredo, Edinburg/Harlingen, San Antonio and Austin. *See*, U.S. Ex. 1086.

[9] U.S. Ex. 1086, June 1, 1990 Houston Hearing Summary at 6.

[10] *Id.* at 11, 18.

[11] *Id.* at 27.

Dallas,[12] and many of them testified about the cohesiveness of the minority communities,[13] and the continued existence of racially polarized voting.[14]

In 1991, the legislative redistricting committees began a new round of hearings. The Senate Committee of the Whole on Redistricting returned to Houston for a hearing on April 5, 1991 and received additional evidence and testimony. The testimony from the Hispanic community at this hearing was particularly impassioned:

> Hispanics comprise over a quarter of the county's population . . . [y]et the only thing we have to show for our numbers is two Hispanic members of the Texas House of Representatives. Under the current boundaries and under the current political situation, it would be very difficult to elect additional Hispanics. . . . In some of these areas we now have sizable populations, but do we have political impact in these districts? No. We have to remember that this growth was not there 10 years ago. So those that ran for and won their offices did so without much help from the Hispanic community and the Hispanic voter. . . . Perceptions are therefore created that Hispanics are not a factor in the political process, when in fact the process gives very little incentive for Hispanics to participate.

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[12] U.S. Ex. 1086, July 14, 1990, Dallas Hearing Summary at 14, 16, 18, 21, 22, 24, 26, 28, 30, 33, 34, 35, 36, 38, 39, 43, 46, 47, 50, 53, 54, 59, 61, 62, 63.

[13] *Id.* at 33, 44, 48.

[14] *Id.* at 10, 12.

U.S. Ex. 1086, Minutes of the Committee of the Whole on Redistricting, April 5, 1991, Tape 1 at 14. Other speakers seconded these comments. *Id.*, Tape 2 at 4, 10. At the same hearing the following statement was made:

> I feel the opportunity to create additional Hispanic districts not only exist[s] but also must be acted upon. . . . Specifically, the Republican Party of Texas supports the creation of a second minority Congressional district in Harris County. A district which would be predominantly Hispanic.

Id. at 19.

These hearings were attended by many members of both houses of the legislature and summaries were prepared for members who could not be present. In addition, of course, committee hearings were held during 1991 on all of the redistricting plans. *See*, U.S. Ex. 1092.

Speaker after speaker during these 1990 outreach hearings and during the 1991 legislative committee hearings gave testimony that the minority communities in Dallas and Houston were not yet fully included in the political process. They also gave testimony about the continuing existence of racially polarized and bloc voting in both metropolitan areas. The legislature would have ignored this testimony at its peril.

Moreover, in 1991, *Williams v. City of Dallas*, 734 F.Supp. 1317 (N.D. Tex. 1990), contained the most current judicial examination of racially polarized voting in Dallas. *Williams* involved a § 2 challenge to the City of Dallas' then-current city council election scheme that called for election of eight members from districts and three members at large. The *Williams* court found that the 8-3 electoral scheme violated § 2 because it diluted the voting rights of both African-American and Hispanic voters in Dallas. The court extensively examined electoral history in Dallas and made extensive

findings of fact. These findings were summarized by the court:

> The history of minority participation in the political process of Dallas is not one of *choice*; it is a record of what blacks and Hispanics have been *permitted* to do by the white majority.
>
> This history has three distinct periods: *the century* of total exclusion when intentional discrimination prevented any minorities from serving on the Dallas City Council; *the decade* of the Citizens Charter Association's selection of those blacks and Hispanics who would be permitted to serve as at-large members of the Council; and *the 15-year period of the 8-3 system*, which permitted two blacks to serve as single-district representatives on the City Council . . . but which (with the exception of 1980-83) denied minorities the right to elect any other single-district Council Members . . . and which denied both blacks and Hispanics access to any of the 3 at-large seats without the support, and permission, of the white majority in North Dallas.

Williams, 734 F.Supp. at 1320. (emphasis in original). The Court specifically found that African-American voters in Dallas were politically cohesive, *id.* at 1387-93, that white bloc voting usually defeated the choice of the African-American community, *id.* at 1393-97, and that the totality of the circumstances compelled the conclusion that the existing 8-3 election plan violated § 2, *id.* at 1401-09. The court also noted that an August 1989 election on a proposed 10-4-1 election plan for the Dallas City Council was "the most racially divisive election in the history of Dallas." *Id.* at 1410.

To suggest that the legislature was simply unaware of these findings made less than one year before it was to draw a new congressional plan is incredible. To suggest that the legislature should have ignored these findings is equally incredible. *See*, Appellees' Brief at 50, n. 47.

Finally, it is absurd to suggest that state legislators are unaware of the voting behavior that has historically occurred in their communities. Successful elected officials are extremely sensitive to even the mildest shifts in voting patterns.

Appellees' assertion that the members of the Texas legislature acted with no information about the existence of cohesive minority groups in Dallas and Houston, with no information about bloc voting by the white majorities in those communities, with no information about the degree of racial polarization in voting in those communities, and with no awareness of how the totality of the circumstances affected the ability of the African-American and Hispanic communities to elect their candidates of choice simply ignores both the record in this case and common sense. Testimony of Paul Colbert, Joint App. at 252.

The Appellees also argue strenuously that the legislature could not have believed in 1991 that racially polarized voting was occurring in congressional elections in Dallas and Houston because the Fifth Circuit Court of Appeals determined in 1993 that judicial elections in Texas are primarily determined by party affiliation rather than race or ethnicity. See, *LULAC v. Clements*, 999 F.2d 831 (5th Cir. 1993)(en banc). However, the *LULAC* court noted that

> judicial elections are low-profile elections in which the voters know little more about the candidates than what they read on the ballot. The voters, therefore, will make their choice based upon the information that the ballot contains--party affiliation.

999 F.2d at 978-79. With respect to both Dallas and Houston, the court concluded that political affiliation and not race was the primary determinant of judicial elections.

The *LULAC* decision is irrelevant to congressional redistricting for two reasons. First, judicial elections are inherently different from the much higher profile congressional elections. Unlike Texas judicial elections, where, in Dallas and Houston especially, there may be as many as a dozen or more judges running county-wide for their seats, congressional elections are much higher profile, more partisan affairs involving usually no more than two candidates at the general election. Second, *LULAC* was decided well after the legislature had completed its congressional redistricting. These conclusions about judicial elections, reached two years after the legislature drew the present congressional plan, simply do not show that the legislature's conclusions about congressional elections had no substantial support.

IV.
THE TRIAL COURT IMPROPERLY ELEVATED SHAPE TO A CONSTITUTIONAL REQUIREMENT

The Plaintiffs challenged 24 of Texas' 30 congressional districts as unconstitutional racial gerrymanders, including six of Texas' nine majority-minority districts. Although the process used by the state in the drawing of all nine of these districts was identical, although the factors weighed by the state were identical, and although the result of the legislature's efforts was nine districts in which a single minority group constituted a majority, the trial court held unconstitutional only CDs 18, 29, and 30 because the evidence showed that more geographically compact majority-minority districts could have been drawn in the Dallas and Houston areas. The trial court explicitly held that districts intended to comply with the state's obligations under the Voting Rights Act are not narrowly tailored unless they have the "least

possible amount of irregularity in shape." *Vera v. Richards*, 861 F.Supp. 1304, 1343 (S.D. Tex. 1994).

This holding by the trial court was legal error. The trial court misread this Court's opinion in *Shaw v. Reno*, 509 U.S. ____, 113 S.Ct. 2816 (1993), and did not have the benefit of this Court's opinion in *Miller v. Johnson*, ___ U.S. ___, 115 S.Ct. 2475 (1995). *Miller* clarifies that

> Shape is relevant not because bizarreness is a necessary element of the constitutional wrong or a threshold requirement of proof, but because it may be persuasive circumstantial evidence that race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines.

115 S.Ct. at 2486.

It is clear that Texas places little value upon regular and compact shape. The Appellees' expert, Dr. Ron Weber, analyzed the compactness of all thirty of Texas' congressional districts. He concluded that twenty of the districts were not compact. Final Report of Ronald E. Weber, Pl. Ex. 36, Joint App. at 169. This included both majority-minority and majority Anglo districts. He further noted that six districts from Texas - CDs 3, 6, 18, 25, 29 and 30 - are well below the lowest bright lines for measuring perimeter or dispersion compactness, *id.* at 170, and four additional districts - 4, 14, 21 and 23 - have very low population compactness scores. *Id.* Of these ten districts that score in the lowest category on one of the three compactness measures, six - CDs 3, 4, 6, 14, 21, and 25 - are majority Anglo. *See*, Joint App. at 144. Indeed, Weber concludes:

> The fact that the compactness scores for one-third of the state's districts fall well below the brightlines or cutoff point for the two studies

> substantiates that the total plan is not compact and has a very unusual configuration both in terms of geography and population concentrations.

Joint App. at 171.

Despite this evidence of lack of geographical compactness throughout the state, the trial court found no constitutional infirmity in these other districts. Rather, the trial court imposed a requirement of geographical compactness only upon CDs 18, 29, and 30. Rather than recognizing that a state may legitimately choose its own priorities for various redistricting principles, the trial court imposed its own choices, at least when a district is drawn to comply with the Voting Rights Act. It thus required these three remedial districts to meet requirements that this Court has not required districts generally to meet. This holding by the trial court was legal error.

Moreover, applying the trial court's legal standard to the other three challenged majority-minority districts would have invalidated them as well. Even the most cursory examination of the map of Texas' congressional districts, Pl. Ex. 34B(1), Joint App. at 144, shows that more geographically compact shapes are possible for these majority-minority districts. Other district courts have recognized that irregularly shaped majority-minority districts are permissible when other non majority-minority districts in the plan are similarly irregular. In *Jeffers v. Clinton*, 730 F.Supp. 196 (E.D. Ark. 1989), the court approved alternative plans that contained majority-minority districts that looked strange. The court concluded that the

> alternative districts are not materially stranger in shape than at least some of the districts contained in the present apportionment plan. The one-person, one-vote rule inevitably requires that county lines and natural barriers

> be crossed in some instances, and that cities and other political and geographic units be split in others.

Id., 730 F.Supp. at 207.

V.
THE RECORD EVIDENCE SHOWS THAT THESE DISTRICTS HAVE A SENSE OF COMMUNITY AND ARE FUNCTIONALLY COMPACT

The Appellees assert that this record contains no evidence that these districts have a "sense of community." Appellees' Brief at 29. This assertion is all the more incredible when one realizes that CDs 18 and 29 are located entirely within Harris County and primarily, but not exclusively, located within the City of Houston. CD 30 is almost entirely located within Dallas County. Moreover, the fact is, and the record evidence shows, that the districts are compact. *See, e.g., DeWitt v. Wilson,* 856 F.Supp. 1409, 1414 (E.D. Cal. 1994), *aff'd* __ U.S. __, 115 S.Ct. 2637 (1995). In *DeWitt,* the district court stated that:

> The territory included within a district should be contiguous and compact, taking into account the availability of transportation and communication. In addition, social and economic interests common to the population of an area [e.g.] an urban area, a rural area, an industrial area or an agricultural area should be considered.
>
> . . . Compactness does not refer to geometric shapes but to the ability of citizens to relate to each other and their representatives and to the ability of representatives to relate effectively to their constituency. Further, it speaks to

> relationships that are facilitated by shared interests and by membership in a political community, including a county or city.

Id., 856 F.Supp. at 1414 (internal quotations omitted).

The evidence in this case affirmatively shows that the populations of CDs 18, 29, and 30 share a sense of community. The demographic data about CD 30 shows "that there is one economy, one transportation system, one media/communications system and one higher educational system," St. Ex. 18, Joint App. at 284, and that "the District 30 population[] tends to be younger, less well educated, in lower socio-economic groups, with higher unemployment and a greater proportion of non-white" than other congressional districts in the Dallas area. *Id.* at 285.

Similarly, the demographics of CDs 18 and 29 in Harris County show that they share "political concerns with regard to education, employment and transportation issues." *Id.* at 289.

In addition to this demographic data, partisan election indices indicate that these districts have much in common. St. Ex. 9A(1), Joint App. at 194, clearly indicates the overwhelming Democratic voting pattern of both CD 18 and CD 29, and the overwhelming Republican voting pattern of adjoining districts. These districts clearly separate Democratic and Republican voters in Harris County and place each group within politically homogeneous districts. This result manifests the legislature's goal of drawing districts that would protect incumbent congressmen.

St. Ex. 9A(2) displays the same information in Dallas. The tendrils of CD 30 reach out from a heavily Democratic district to encompass virtually all of the Democratic areas of Dallas County. Of course, the core area is the area that was so bitterly fought over by the two incumbents, Democratic Congressmen Bryant and Frost (CDs 5 and 24, respectively), and the major legislative aspirant for the CD 30 seat, then-Sen. Eddie Bernice Johnson. Like Harris County, the districts in

Dallas County precisely place voters into politically homogeneous districts.

This evidence simply fails to show that these districts lack a sense of community. In fact, the populations residing in these districts share many common concerns and viewpoints. Appellees can point to no evidence to substantiate their assertion that these districts lack a sense of community.

VI.
THE SPLITTING OF VOTING TABULATION DISTRICTS DOES NOT MANIFEST A RACIAL PURPOSE

The Appellees make much of the fact that the legislature split VTDs, suggesting that the number of split VTDs manifests a racial purpose. Once again, the Appellees are wrong. In order for the legislature to begin the redistricting process, the Texas Legislative Council aggregated census blocks which it obtained from the U.S. Census Bureau into voting tabulation districts or "VTDs." These census block aggregations or VTDs were constructed in a manner to approximate, albeit roughly, local election precincts created by local governments in all of the cities and counties in the state in order to make more precise the analysis of the political effect of proposed redistricting plans. *See*, Pl. Ex. 13A at 22. Local election precincts are always reconfigured after the redistricting process.

The Appellees' theory that the splitting of VTDs manifests a racial purpose has no factual basis. For example, in CD 18, 223,491 people resided within whole VTDs, Pl. Ex. 34Q at 85, and 342,726 lived within split VTDs. *Id.* at 90. The racial/ethnic breakdown by percent of population of those living within whole VTDs is 65% Black, 9.5% Hispanic, 23.8% Anglo, and 2.4% other. *Id.* at 85. The percentages for

those residing within split VTDs is 41.8% Black, 19.1% Hispanic, 36.1% Anglo, and 3.8% other. *Id.* at 90.[15]

These statistics do not establish that VTDs were split for racial purposes. Indeed, these statistics show that a smaller percentage of Blacks reside within the split VTDs included in the district than reside within whole VTDs. Moreover, 36% of the population of these split VTDs is Anglo. These statistics hardly manifest a racial purpose.[16]

VII.
CONCLUSION

Because the court below erred in holding CDs 18, 29, and 30 unconstitutional, the State Appellants respectfully request that this Court reverse the district court's judgment and render judgment for the Appellants.

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[15] For the same information concerning CD 29, *see*, Pl. Ex. 34Q at 150, 154, and for CD 30, *see*, Pl. Ex. 34Q at 156, 158 and 162.

[16] The Appellees also make much of the number of precincts created as a result of this redistricting plan. The number of precincts resulted from the rush to create the various plans, with little time spent trying to conform the lines of the plans for different offices. Testimony of Paul Colbert, Joint App. at 254-55.

Respectfully submitted,

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